

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, D.C.

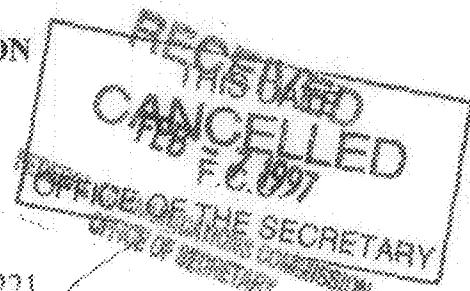
In re:

Review of the Commission's Regulations  
Governing Television BroadcastingTelevision Satellite Stations  
Review of Policy and Rules

) MM Docket No. 91-221

) MM Docket No. 87-7

To: The Commission



RECEIVED

FEB 10 1997

**COMMENTS OF BET HOLDINGS INC.**
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Byron F. Marchant  
 Stephen Diaz Gavin  
 Jeffrey L. Ross  
 Patten Boggs, L.L.P.  
 2550 M Street, N.W.  
 Washington, D.C. 20037-1350  
 202-457-5257

Its Attorneys

February 10, 1997

No. of Copies rec'd  
List ABCDE

039

	TABLE OF CONTENTS	PAGE
Executive Summary .....		1
I. The Commission Should Not Adopt Rules Increasing Consolidation In The Television Market That Would Hinder Competition and Diversity. ....		2
A. The Commission Should Not Adopt Any Rules Based On A Grade "A" Contour Overlap. ....		2
B. The Commission Should Not Change The Current Radio-Television Cross-Ownership Rules. ....		3
C. The Commission Should Grandfather LMAs, But Only For A Limited Duration. ....		4
II. The Commission Should Not Grant Waivers From Its Local Ownership Rules Because Waivers Will Hinder The Ability Of New Entrants To Enter Television And DTV Markets. ....		5
Conclusion .....		6

## Executive Summary

The Federal Communications Commission ("FCC" or "Commission") must evaluate the cumulative impact of recent changes to broadcast television rules before it adopts the proposed rules in this and related broadcast ownership proceedings.<sup>1</sup> The FCC's decisions in these proceedings will ultimately determine whether new entrants will have any opportunity to participate in broadcasting as it moves to the digital age, or whether regulatory and competitive entry barriers will be so high that incumbent broadcasters will dominate the broadcast marketplace. The Commission's statutory diversity obligations pursuant to Section 307(b), the impact of recent changes to broadcast licensing rules and digital television rules pursuant to the 1996 Telecommunications Act, and the Commission's broadcast public interest obligations, must be assessed in the aggregate when considering further changes to broadcast ownership and attribution rules.

Section 307(b) of the Act<sup>2</sup> mandates that the Commission distribute licenses in a fair, efficient and equitable manner. The Commission's Section 307(b) obligation is not ameliorated

<sup>1</sup> To assess the impact on consolidation and diversity of ownership in TV broadcasting, the FCC must analyze the overall impact of its pending actions in the Digital Television Licensing proceeding as well as the following ownership/attribution proceedings: 1) Broadcast Television National Ownership Rules (MM Docket No. 96-222); Review of the Commission's Regulations Governing Broadcast Television (MM Docket No. 91-221); Television Satellite Stations Review of Policy and Rules (MM Docket No. 87-8), Notice of Proposed Rulemaking, FCC 96-437, released November 7, 1996 (hereinafter, "National Ownership Proceeding"); 2) Review of the Commission's Regulations Governing Broadcast Television, MM Docket No. 91-221 and Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-7, Second Further Notice of Proposed Rulemaking, FCC 96-438, released November 7, 1996 ("Local Ownership Proceeding"), and Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Intersat, MM Docket No. 94-150, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, MM Docket No. 92-51, and Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rulemaking, MM Docket No. 87-154, FCC 92-436, released November 7, 1996 (hereinafter, "Attribution Proceeding").

<sup>2</sup> "[T]he Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." Section 307(b) of the Communications Act of 1934, as

by the fact that "over-the-air" broadcast television competes with other video services, such as cable or VCRs. Over-the-air broadcasting is the only place where the Commission can foster "a universal forum for the exchange of national and local discourse that is available to all members of the public [because] . . . unlike other services, broadcast television is freely accessible to everyone."<sup>3</sup> For potential new entrants, obtaining a broadcast license is the last opportunity to enter the media marketplace. The capital requirements for entry into cable or Direct Broadcast Satellite ("DBS") are too high for most local businesses.<sup>4</sup>

The Commission must uphold its statutory mandate to eliminate market entry barriers and ensure that small businesses are not foreclosed from participating in the ongoing communications revolution.<sup>5</sup> In this context, the Commission must consider the effects of ownership concentration and predictability of access to capital for new entrants into

---

amended (hereinafter, "Act"), 47 U.S.C. § 307(b).

<sup>3</sup> Comments of Black Citizens for a Fair Media, et. al., in Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, filed May 17, 1995, at 19-20. Broadcasters are trustees of the public airwaves and must serve the public interest in their programming. Local programming is an important component of the broadcasters' public interest obligation. Similar local programming requirements are not imposed on other video providers, such as DBS licensees. See ibid. at 15-31. Local broadcasters continue to supplement DBS service with local programming, as well as provide 61% of the programming viewed by cable systems. Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Third Annual Report, FCC 96-496, at p. 50-51, released January 2, 1997 (hereinafter, "Report").

<sup>4</sup> The January, 1996 DBS auction winner bid \$682 million for the licenses. For the first nine months of 1996, 81 cable transactions totaling \$15.6 billion dollars, or \$2,078 per subscriber, were announced. Report, supra note 3, at 11.

<sup>5</sup> In the Matter of Section 237 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113 Notice of Inquiry, 11 FCC Rd 6280 (1996).

broadcasting.<sup>x</sup> The Commission also has a statutory mandate to ensure that the public interest, convenience, or necessity will be served by grant of broadcast licenses.<sup>y</sup>

Diversity of sources of information is a critical element of the public interest calculus. It has been a "fundamental purpose" of Commission regulation of broadcasting for nearly 50 years "to promote diversification of ownership in order to maximize diversification of program and service viewpoints."<sup>z</sup> Diversification of control of the broadcast media is particularly desirable where, as here, a government licensing system limits access by the public to the use of television facilities.<sup>z</sup> As the U.S. Supreme Court has noted, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."<sup>aa</sup> The courts have also noted the importance of government's actions not being the cause of concentration of control of the sources of news and opinion.<sup>aa</sup>

BET urges the Commission to use the television broadcast market as the relevant market for examining competitive entry barriers. Thus, the Commission should assess the impact of its actions on consolidation problems within the broadcast TV market. The market definition of multichannel video programming delivery, which is based on the definition of a cable system and uses cable franchise areas as the relevant geographic market, is not the correct market definition

---

\* See, id. at 6287, citing Competitive Bidding Fifth Report and Order, 9 FCC Rcd 5532, 5536 (1994).

<sup>z</sup> 47 U.S.C. § 307(a); 47 U.S.C. 309(a).

<sup>aa</sup> Amendment of Sections 3.35, 3.240, and 3.636 of Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcast Stations (Report and Order), 18 FCC 288, 291 (1953).

<sup>aa</sup> Policy Statement of Comparative Broadcast Hearings, 1 FCC 2d 393, 394 (1965).

<sup>aa</sup> Associated Press v. U.S., 326 U.S. 1, 20 (1945).

<sup>aa</sup> Scripps Howard Radio, Inc. v. F.C.C., 189 F.2d 677 (D.C. Cir. (1951), *cert denied*, 342 U.S. 830.

to examine proposed changes in the over-the-air, broadcast television market.<sup>12</sup> Unless the Commission uses the broadcasting market to examine the effect of any proposed changes, Section 307(b) diversity obligations will be effectively "written out" of the Communications Act.

Consolidation of TV broadcast ownership will increase significantly because of several factors: 1) changes to FCC broadcast licensing procedures, 2) changes to FCC national ownership rules, 3) deregulation of the financial interest and syndication restrictions, and 4) the Digital Television ("DTV") licensing plan. An unprecedented number of mergers and acquisitions have occurred since elimination of the financial interest and syndication rules and passage of the Telecommunications Act of 1996 (the "Telecom Act").<sup>13</sup> Over \$10 billion in television transactions occurred in 1996, more than doubling the \$4.6 billion that occurred in 1995.<sup>14</sup> Without careful consideration of these factors, further actions by the FCC to relax TV ownership and attribution rules will increase broadcast ownership concentration among a small group of incumbent broadcasters and create insurmountable barriers to new entrants in digital, as well as analog, TV broadcasting.

Recent changes to the broadcast licensing rules also will hasten the further concentration of broadcast ownership. The Commission has lengthened the broadcast license terms of television stations from 5 years to 8 years,<sup>15</sup> implemented a new two-step broadcast renewal

---

<sup>12</sup> This multi-channel video programming market analysis derives from the cable regulation set forth in the Cable Television Consumer Protection and Competition Act of 1992, Public L. No. 102-385, 106 Stat. 1460 (1992).

<sup>13</sup> Pub. L. 104-104, 110 Stat. 56 (1996).

<sup>14</sup> "Consolidation Yea or Nay," *Broadcasting and Cable*, p. 4, January 27, 1997.

<sup>15</sup> Implementation of Section 203 of the Telecommunications Act of 1996 (Broadcast License Term), Sections 73.1020 and 74.15, 12 FCC Rcd \_\_\_\_\_, MM Docket No. 96-60, FCC 97-17, released January 24, 1997.

process that eliminates comparative renewal hearings and essentially renews broadcast licenses automatically,<sup>11</sup> and "frozen" applications for new television station allotments.<sup>12</sup> These rules severely curtail the opportunity for new entrants to acquire television licenses. Existing broadcasters keep their licenses longer, and are virtually assured of license renewal. In addition, new entrants cannot file applications for new, competing stations.<sup>13</sup> While new entrants are frozen out of the broadcast TV markets, incumbent broadcasters can continue to combine with other incumbents to increase their market presence, up to 35% of the national audience.<sup>14</sup>

The DTV licensing process also will magnify incumbent broadcasters' market power. The FCC has proposed that each incumbent "full-service" broadcaster will be given an additional 6 MHz channel to implement DTV.<sup>15</sup> The Commission has also adopted DTV technical

---

<sup>11</sup> Renewal expectancies are granted provided the licensee has met certain public interest requirements. Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures) 11 FCC Rcd 6363 (1996).

<sup>12</sup> The Commission froze applications for the top 30 broadcast markets in 1987. Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, MM Dkt. No. 87-268, Order, 2 FCC Rcd 5125 (1987). The Commission froze remaining markets on September 20, 1996, and also provided that any applications filed after October 24, 1991 that had not yet been granted would not receive a 6 MHz DTV channel. Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, MM Docket 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968, 10973 (1996). The Commission has also frozen processing of all mutually exclusive application cases, creating further barriers to new entrants. See Bachtel v. F.C.C., 19 F.3d 875 (D.C. Cir. 1993), FCC Public Notice, "FCC Freezes Comparative Hearing Proceedings," 9 FCC Rcd 1055 (1994), as modified, 9 FCC Rcd 6689 (1995).

<sup>13</sup> Id. at 11013.

<sup>14</sup> Order, FCC 96-91, released March 8, 1996, 61 FR 10691.

<sup>15</sup> Memorandum Opinion and Order/Third Report and Order/Third Notice of Proposed Rulemaking, MM Docket 87-268, 7 FCC Rcd 6924, 6926 (1992). The Act requires initial DTV licenses to be allocated to incumbents for free. Broadcasters must pay spectrum fees for providing ancillary services on these DTV channels. 47 U.S.C. § 336(e). The value of the DTV spectrum, if auctioned, has been estimated between \$10 and \$70 billion. "The Great HDTV Swindle," Wired, p. 57, 60, February 1997. The Congressional Budget Office ("CBO") has scored the DTV spectrum at \$12 billion if it were auctioned. Joint Statement of David H. Moore and Perry C. Beider, Congressional Budget Office, before the Subcommittee on Telecommunications and Finance, Committee on Commerce, U.S. House of Representatives, March 21, 1996, at 13.

standards that will allow existing broadcasters to provide multiple streams of standard definition programming.<sup>21</sup> Further, spectrum flexibility allows DTV channels to be used for other types of wireless communication services.<sup>22</sup> Thus, the extra DTV channel that the Federal Communications Commission will give away for free to incumbent "full power" broadcasters doubles the amount of spectrum allocated to incumbent TV broadcasters and increases their broadcast market power exponentially.<sup>23</sup>

Against the backdrop of recent changes to existing rules, the Commission has proposed changes to local and national ownership rules and attribution rules that will increase concentration among incumbent broadcasters. Specifically, in three related proceedings, the Commission proposed 1) modifications in the calculation of national audience reach,<sup>24</sup> 2) proposed to use a Grade A contour instead of a Grade B contour for calculating permitted local ownership structures,<sup>25</sup> 3) proposed changes to the attribution rules that will decrease

---

<sup>21</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Services, Fourth Report and Order, 11 FCC Rcd \_\_\_\_\_, MM Docket 87-268, released December 27, 1996, at 4.

<sup>22</sup> *Id.*

<sup>23</sup> "The acquisition by broadcasters of an additional license (apparently at no charge), then, is more than a property rights grab without parallel in the United States since the days of our previous robber barons, the railroads. It is also an extraordinary denial of our professed commitments to increase competition, to lower entry barriers, and to expand opportunities for historically excluded persons in the broadcasting industry." Krattenmaker, Thomas G., "The Telecommunications Act of 1996," *Federal Communications Bar Journal*, November 1996. The Telecommunications Act of 1996 also "exacerbates a fundamental flaw in our regulatory policy toward broadcasting: the use of spectrum allocation to confer market power on a closed class of privileged broadcasters." *Id.* at 41.

<sup>24</sup> National Ownership Proceeding, *supra* n. 1 at 1-2.

<sup>25</sup> Local Ownership Proceeding, *supra* n. 1 at 7.

predictability and flexibility,<sup>28</sup> and 4) proposed changes to the treatment of TV Satellite stations, LMAs, and JSAs for the purposes of the national and local ownership caps.<sup>29</sup>

In considering comments in these proceedings, the Commission should "resist pressure from those who urge the Commission to restrict market forces in order to protect their private interests rather than to promote the public interest."<sup>30</sup> BET urges the Commission to prevent further concentration of broadcast ownership and avoid creating potential market entry barriers to new entrants as it considers changes to these rules. In considering market entry and public interest factors, the Commission should take special note of the minorities, women and small businesses. Minority-owned businesses only hold 3% of all television broadcast licenses.<sup>31</sup> Empirical studies have demonstrated a strong correlation between ownership by minority businesses and diversity of programming.<sup>32</sup> Congress has also eliminated tax certificates to promote minority and women ownership in television.<sup>33</sup> More recently, the Commission has proposed rules that will reduce the enforcement of equal opportunity recruitment and hiring of minority and women applicants.<sup>34</sup> By providing incentives for new entrants to participate in TV

---

<sup>28</sup> Attribution Proceeding, *supra* n. 1 at 5.

<sup>29</sup> National Ownership Proceeding, *supra* n. 1 at 9-10, Attribution Proceeding, *supra* n. 1 at 26, 32.

<sup>30</sup> Using Market-Based Spectrum Policy to Promote the Public Interest, Gregory L. Rosston and Jeffrey S. Steinberg, Federal Communications Commission, January 1997.

<sup>31</sup> Minority Commercial Broadcast Ownership in the United States: The Minority Telecommunications Development Program, National Telecommunications and Information Administration, United States Department of Commerce, April, 1996.

<sup>32</sup> Congressional Research Service, Minority Broadcast Station Ownership and Broadcast Programming: Is there a nexus? (June 29, 1986 at 13, 15.)

<sup>33</sup> Self-Employed Health Insurance Act of 1995, Pub. L. No. 104-7, §2, 109 Stat. 93 (1995).

<sup>34</sup> Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines, Notice of Proposed Rulemaking, 11 FCC Red 5154 (1996).

broadcasting, the Commission will promote its 307(b) diversity public interest obligation by increasing the pool of potential participants among minorities, women, and small businesses. BET encourages the FCC to adopt incentives for new entrant participation in broadcasting, which would satisfy the Commission's statutory obligation to fairly and equitably distribute licenses, eliminate market entry barriers, and serve the public interest. BET specifically addresses the issues raised in the "local ownership" proceeding below.<sup>22</sup>

---

<sup>22</sup> BET is filing comments simultaneously in the Commission's three related broadcast attribution and ownership proceedings: 1) Broadcast Television National Ownership Rules (MM Docket No. 96-222); Review of the Commission's Regulations Governing Broadcast Television (MM Docket No. 91-221); Television Satellite Stations Review of Policy and Rules (MM Docket No. 87-3), Notice of Proposed Rulemaking, FCC 96-437; released November 7, 1996; 2) Review of the Commission's Regulations Governing Broadcast Television, MM Docket No. 91-221 and Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-7, Second Further Notice of Proposed Rulemaking, FCC 96-438, released November 7, 1996, and Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, MM Docket No. 92-51, and Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rulemaking, MM Docket No. 87-134, FCC 92-436, released November 7, 1996.

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C.

In re:	)	
	)	
Review of the Commission's Regulations	)	MM Docket No. 91-221
Governing Television Broadcasting	)	
	)	
Television Satellite Stations	)	MM Docket No. 87-7
Review of Policy and Rules	)	

To: The Commission

**COMMENTS OF BET HOLDINGS INC.**

BET Holdings, Inc. hereby submits its comments in the above captioned proceeding related to local ownership and television satellite stations. BET is a cable television entertainment business that reaches over 45 million cable households through its cable programming services, BET Cable Network, BET on Jazz, and Action Pay-Per-View. BET also produces feature length films through its ventures with BET Film Productions, BET Pictures, and United Image Entertainment. BET has also partnered with Microsoft to develop on-line programming and interactive software products for African-American consumers.

**I. The Commission Should Not Adopt Rules Increasing Consolidation In The Television Market That Would Hinder Competition and Diversity.**

In the Commission's prior television ownership proceeding, several commenters relied upon a report prepared by Economists Inc. to assert that greater concentration of broadcast media would lead to greater diversity.<sup>12</sup> BET believes that the assumptions and conclusions of the

---

<sup>12</sup> See generally comments of Westinghouse, CBS, NBC, and ABC in the prior television ownership proceeding MM Docket Nos. 91-221 and 94-150.

report are flawed.<sup>2</sup> In fact, the significant consolidation of broadcast television is reducing the diversity of voices and programming in broadcast television markets.<sup>3</sup> Additionally, the increasing concentration of broadcast outlets is creating barriers to entry. The Commission should not distort the market further by adopting rules that would produce greater market concentration.<sup>4</sup>

**A. The Commission Should Not Adopt Any Rules Based On A Grade "A" Contour Overlap.**

The Commission has proposed a combined DMA/Grade A signal contour approach to local ownership restrictions. Regardless of the market definition (i.e. DMA or Arbitron) the Commission ultimately adopts,<sup>5</sup> it should not analyze local ownership structures based on a Grade-A contour overlap. Rather the Commission should retain the Grade-B contour overlap analysis incorporated in its current rules.<sup>6</sup> Permitting entities to own two stations based on an assessment of Grade-A contour overlap only, exacerbates consolidation and ownership concentration in local television markets. To support its diversity obligation under Section 307(b), the Commission should continue to analyze local market structures based on a prohibition of Grade-B overlap.<sup>7</sup>

---

\* BET supports the comments of Black Citizens for a Fair Media in a prior proceeding, which detail the flaws inherent in the report's conclusions, as discovered by independent experts consulted to evaluate the report's methods and assumptions. See Comments of Black Citizens for a Fair Media, MM Docket Nos. 91-22, 87-8.

\* BET agrees with the prior comments of the National Association of Black Owned Broadcasters ("NABOB") that permitting further consolidation in the television market would have a deleterious effect upon minority-owned television stations. See Comments of the NABOB, MM Docket Nos. 94-149, 91-140, 94-150, 92-31, 87-154, 91-221, 87-8; at 13.

\* See generally the Executive Summary, *supra*, for a discussion of past and future actions that have or will contribute towards the concentration and consolidation of the broadcast television market.

\* BET is continuing to assess the aspect of the DMA/Grade A proposal that prohibits entities from owning more than one station in a DMA.

\* The current "duopoly" rule prohibits an overlap in Grade B contours. See 47 C.F.R. § 73.3355(b).

\* Grade A contours have a radius of approximately 30-45 miles; as opposed to Grade B contours which have a

BET opposes the Grade A overlap proposal because it will exacerbate concentration of ownership in the TV market in several ways: (1) greater aggregation of national and regional TV group conglomerates, (2) a greater number of free DTV allotments would be given away to and controlled by a "handful" of national and regional conglomerates, and (3) competitive barriers to entry for new TV and DTV entrants would increase exponentially. The Department of Justice and the Commission should perform a market concentration analysis of the potential ownership changes that could occur moving from a Grade B to a Grade A overlap standard at the local level before any further action is taken with regard to this proposal.

**B. The Commission Should Not Change The Current Radio-Television Cross-Ownership Rules.**

The Commission should not change the radio-television cross-ownership rule. The proposed rule change would extend -- from the top 25 markets to the top 50 markets -- the requirement of having 30 independently-owned broadcast voices after an entity acquires a radio and television station in the same market.\* The Commission has already completely deregulated radio on the national level and significantly deregulated radio ownership limits on the local level.\* These actions have already produced considerable concentration of ownership in the radio market.

Similarly, deregulation of the financial interest and syndication rules, national ownership limits in television, the proposed giveaway of television spectrum for DTV stations, and the flexibility of TV satellite stations has produced, and will continue to produce, an unprecedented

---

\* radius of approximately 50-70 miles. Second Further Notice, ¶ 10.

\*\* See Second Further Notice, ¶ 59.

\*\*\* See Second Further Notice, ¶ 62 (discussing that prior to the 1996 Telecommunications Act a firm could own up to four radio stations in a single market and after the Act a firm could own up to eight stations in a market).

concentration of ownership in the television market.<sup>12</sup> Extending the cross-ownership rule to the 50 top markets would simply exaggerate the consolidation problem by inviting it into another 25 markets. Such a rule would have the deleterious effect of concentrating media power in even fewer TV-radio group conglomerates, while creating insurmountable barriers to entry for potential new entrants into the TV and DTV markets.

**C. The Commission Should Grandfather LMAs, But Only For A Limited Duration.**

In a companion proceeding, the Commission is seeking comments on whether it should count LMAs as being attributable toward multiple ownership limits according to the same attribution rule used for LMAs in the radio context.<sup>13</sup> If the Commission ultimately decides that LMAs will be attributable, the Commission proposes to grandfather LMAs that violate the multiple ownership rules until the term of the LMA expires.<sup>14</sup> After this point, a person would be required to obtain a waiver before transferring or renewing the LMA.<sup>15</sup>

BET supports grandfathering existing LMAs, but only for a limited period of time. All LMAs that do not comply with the multiple ownership rules should be grandfathered for a period of no longer than 24 months from a initial order in this docket.<sup>16</sup> At that time the grandfather provision will expire and all arrangements would be terminated. Such action will have the benefit of enhancing potential joint relationships for new entrants in the TV and DTV markets.

---

<sup>12</sup> "Consolidation Yea or Nay," *Broadcasting and Cable*, p. 4, January 27, 1997.

<sup>13</sup> See Further Notice of Proposed Rule Making, FCC 96-436, ¶ 27 (released November 7, 1996) (hereinafter "Further Notice"); see also Comments of BET Holdings, Inc., MM Docket Nos. 94-130, 92-51, 87-154; filed in the attribution proceeding at the same time as these comments.

<sup>14</sup> See Second Further Notice, ¶ 88.

<sup>15</sup> Id.

<sup>16</sup> For a discussion of the treatment of LMAs and grandfathering existing relationships with regard to changes in the attribution rules proposed in a companion proceeding to this docket, see Comments of BET Holdings, Inc., MM Docket Nos. 94-130, 92-51, 87-154; at 5,6.

**II. The Commission Should Not Grant Waivers From Its Local Ownership Rules Because Waivers Will Hinder The Ability Of New Entrants To Enter Television And DTV Markets.**

The Commission's proposed "DMA/Grade A" rule would prohibit entities from owning more than one station in a local market and would prohibit Grade A contours from overlapping.<sup>127</sup> BET does not support this approach with regard to the use of Grade A contours.<sup>128</sup> BET also believes that the Commission should not grant waivers from the local ownership rule it ultimately adopts. BET believes that relaxing the local ownership limits would benefit only those large group broadcasters who are already well-established, thereby reducing local television ownership opportunities for others and decreasing local television programming diversity.<sup>129</sup>

The Second Further Notice seeks comments on several proposals for granting waivers to its proposed DMA/Grade A rule including granting waivers when an applicant shows that it is the only candidate for a "failed station" -- one that has not been operating for a substantial period of time or faces imminent bankruptcy.<sup>130</sup> BET strongly opposes granting the proposed "failed station" waivers. The Commission should not permit existing broadcasters to apply for these stations because there exists too much concentration in the television market already. Any "failed station" licenses should be licensed to new entrants via auction or comparative hearing.

The Commission also proposes to grant waivers to its proposed DMA/Grade A rule for local broadcast television licensees who apply for a channel allotment that has remained unused

---

<sup>127</sup> Second Further Notice, ¶ 13.

<sup>128</sup> See Section I.A, *supra*.

<sup>129</sup> See Comments of Press Broadcasting Company, Inc., MM Docket Nos. 91-321; ¶¶ 3-5.

<sup>130</sup> Second Further Notice, ¶ 41.

for a substantial period of time or for a new channel in a local market.<sup>32</sup> BET opposes this proposal and requests that the Commission make any dormant or new channels available to new entrants in the TV or DTV markets via auction or comparative hearing.

Similarly, the Commission proposed to grant waivers to its proposed DMA/Grade A rule based upon market size and concentration. Specifically, the Commission would allow joint ownership of stations that either: (1) had a very small audience or advertising market share or (2) were located in a large market and a certain number of independently-owned voices would remain after the acquisition of the station.<sup>33</sup> BET opposes this proposal. As with failed stations and unused allotments, the Commission should create opportunities for new entrants to own stations and not allow existing broadcasters to increase their dominance in the market by obtaining all remaining available TV licenses.

#### CONCLUSION

The Commission should not adopt rules that would increase the concentration of interests in the television broadcast market. The Commission should not change the rules to permit a grade A contour overlap and it should not extend its cross-ownership rules to permit cross-ownership in an additional 25 markets. The Commission should grandfather existing LMA arrangements that would violate the multiple ownership rules, but only for a 24-month period. The Commission should not grant any waivers from the local ownership rules that would deny new entrants the opportunity to enter the TV or DTV markets. It should not grant waivers for: "failed stations," new or unused channels, or specific market sizes and concentrations. These stations should be made available exclusively to new entrants via auction or comparative hearing.

---

<sup>32</sup> *Id.* ¶ 45.

<sup>33</sup> *Id.* ¶ 47.

Respectfully submitted,

BET HOLDINGS, INC.

By:



Byron F. Merchant

Stephen Diaz Gavin

Jeffrey Ross

PATTON BOGGS, L.L.P.

2550 M Street, N.W.

Washington, D.C. 20037-1350

202-457-5257

Its Attorneys

February 10, 1997